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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,034	09/09/2003	Jean-Pascal Zambaux	ATMI-658	2051
25559	7590	04/20/2005	EXAMINER	
ATMI, INC.			RAYFORD, SANDRA M	
7 COMMERCE DRIVE			ART UNIT	
DANBURY, CT 06810			PAPER NUMBER	

1772

DATE MAILED: 04/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/658,034	Applicant(s) ZAMBAUX, JEAN-PASCAL	
	Examiner Sandra M. Nolan-Rayford	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19 and 23-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-19 and 23-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Pursuant to entry of any amendment presented in the response dated 01 February 2005 ("the last response"), claims 14-19 and 23-38 are pending.

Claims 1-13 and 20-22 have been cancelled.

Amendments to the Specification and Claims

2. The amendments to the specification and claims set out in the last response do not involve new matter.

Applicant should consider deleting references to ultra-high molecular weight polyethylene (also called "UHMW PE") from the specification since, applicant stated in the last response [within the last four lines on page 9]: "ultra-high molecular weight polyethylene . . . is not capable of withstanding temperatures of at least 253° Celsius."

Double Patenting

3. The examiner notes that applicant has found that clear lines of distinction exist between the claims of this application and those of application Serial Nos. 10/684,932 and 10/665,871.

If allowable subject matter is indicated in the future, the examiner will reevaluate the claims of those cases in light of that subject matter.

Summary of Base Claims

4. The base claims of this application are claims 14 and 23. They can be summarized as follows:

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Claim 14 covers an apparatus comprising:

a bag for storing fluids comprising a film comprising a polymer selected from the group of: PEEK, PTFE, PFA, MFA, FEP, ECTFE, ETFE, PDVF, THV, PEI, PMP and suitable mixtures thereof, which bag is suitable for heating to temperatures in excess of 253° Celsius.

Claim 23, an independent claim, covers a kit comprising the bag of claim 14, a packaging material and instructions of indicia on or inside the packaging material.

Note: Applicant has defined the abbreviations recited in claims 14 and 23 on page 3 of the specification.

Rejection Withdrawn

5. The 35 USC 103 rejection of claims 14-19 and 23-38 set out in section 5 of the 15 November 2004 office action ("the last office action") is withdrawn in view of the amendments to the claims in the last response.

New Rejections

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 14, 18-19, 29-33, and 34-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Swartz et al (US 5,993,593).

Swartz teaches heat-sealed bags (col. 3, line 31) made using PEEK polymers that are heat sealed at temperatures of 205 to 580 °C. (claims 31 and 33 of the patent).

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Figure 3C shows the sealing of a tube 14 perpendicular to the edge of two PEEK films 11 and 11'.

The Swartz tube/film combinations are deemed apparatuses.

While not reciting every claimed feature, Swartz anticipates these claims because:

- a. The use of its bags to house fluids is a matter of intended use.
- b. Ultrasonic heating is deemed a process limitation that does distinguish the bags claimed here from the Swartz bags.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
10. Claims 14-19 and 23-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swartz.

Swartz is discussed above. Claim 33 recites films of "up to 0.080 inch thickness.

It fails to teach all of the thickness, heating times, content and the other kit components recited in applicant's claims.

In the absence of convincing objective evidence to the contrary all of these features are deemed matters of engineering/design choice, depending upon the particular use to which the films and bags of Swartz are to be put.

Citations as of Interest

11. US 4,320,224 to Rose is cited of interest as showing PEEK polymers having the structure recited in applicant's claims and teaching their heat stability (col. 9, line 66). The Japanese and German citations refer to the use of PEEK polymers in environments calling for heat resistance/sterilizability.

Response to Arguments

12. Applicant's arguments with respect to claims 14-19 and 23-38 have been considered but are moot in view of the new ground(s) of rejection.

Final Rejection

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.


S. M. Nolan-Rayford
Primary Examiner
Technology Center 1700

10658034(20050416)